83 - 1556

No.

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In The

Supreme Court of the United States

October Term, 1983

MICHAEL ADAMS,

Petitioner,

vs.

PROVIDENCE & WORCESTER COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF

In its Brief In Opposition, the respondent Providence & Worcester Company states that it "has never accepted, and does not accept here, petitioner's characterization of his removal from service on August 28, 1980 as a 'medical disqualification'." (Respondent Br. at 1).

The petitioner underscores that throughout the trial the respondent never took exception to the use of the term "medical disqualification." And in fact, both Judge Tauro and the petitioner's counsel asked the respondent's chief witness, President Harrold, about the medical disqualification:

THE COURT: The specific question to you is: What if anything would the Plaintiff have to do in order to have his medical disqualification lifted by you?

THE WITNESS: Okay. I'm sorry. He would have to tell me that he was fit and able to perform his duties. (Trs. 100).

. . .

Q. Sir, today have you lifted the medical restriction, medical disqualification of Michael Adams?

A. No. (Trs. 101)

See also Transcript at 83-84; 104-05. This direct examination testimony was never disputed by the respondent during the trial, and Judge Tauro, relying on this undisputed testimony, proceeded to base his ruling on the fact that the petitioner had been medically disqualified (3a, 5a-6a, 8a-9a).

Now, on appeal, the respondent is attempting to deny the fact that it medically disqualified the petitioner. The respondent cannot evade the consequences of its undisputed testimony at trial, and the petitioner respectfully requests that this Court recognize the fact of the petitioner's medical disqualification.

Respectfully submitted,

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